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Attorneys for:
REGAL STONE, LTD., *in personam*, M/V COSCO BUSAN, *in rem*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT CALIFORNIA

CHELSEA, LLC, MARK RUSSO, ALLEN
LORETZ, and IVAN SIMPSON,
individually and on behalf of all others
similarly situated,

Plaintiffs,

vs.

REGAL STONE, LTD., HANJIN
SHIPPING, CO., LTD., CONTI CAIRO
KG, NSB NEIDERELBE, SYNERGY
MARITIME, LTD., *IN PERSONAM*, M/V
COSCO BUSAN, their engines, tackle,
equipment, appurtenances, freights, and
cargo *IN REM*,

Defendant.

Case No. C 07 05800 (SC)

**CLAIMANT TO VESSEL REGAL
STONE, LTD. MAKING A
RESTRICTED APPEARANCE TO
ANSWER ON BEHALF OF
DEFENDANT M/V COSCO BUSAN, *IN
REM***

Regal Stone, Ltd., Claimant to Vessel making a restricted appearance,
solely for the purpose of answering on behalf of Defendant M/V COSCO BUSAN *in rem*

1 (hereinafter "Defendant") to Plaintiffs' CHELSEA, LLC, MARK RUSSO, ALLEN
2 LORETZ, and IVAN SIMPSON, individually and on behalf of all others similarly
3 situated (hereinafter "Plaintiffs") Verified First Amended Class Action Complaint and
4 admits, denies, and alleges as follows. Defendant reserves the right to file appropriate
5 amendments to this Answer, if necessary, if and when additional information is
6 obtained.

7 1. Defendant admits the allegations contained in Paragraph 17 of
8 Plaintiffs' Complaint.

9 2. Defendant denies the allegations contained in Paragraphs 2, 3,
10 10, 11, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 40, 41, 42, 43,
11 44, 45, 47, 48, 49, 50, 52, 53, 54, 55, 56, 57, and 58 of Plaintiffs' Complaint.

12 3. Defendant has insufficient information to respond to those
13 allegations contained in Paragraphs 1, 4, 5, 7, 8, and 9 of Plaintiffs' Complaint and
14 therefore based upon its lack of information and belief, Defendant denies the allegations
15 contained therein in their entirety.

16 4. To the extent that the Plaintiffs incorporate by reference
17 allegations contained in Paragraphs 35, 38, 46, 51, Defendant incorporates herein its
18 responses thereto.

19 5. Answering paragraph 6, Defendant denies that a class exists
20 or class treatment is appropriate. Defendant has insufficient information to respond to
21 all other allegations in Paragraph 6 and therefore based upon its lack of information and
22 belief, Defendant denies the allegations contained therein in their entirety.

23 6. Answering paragraph 12, Defendant admits Regal Stone is
24 incorporated in Hong Kong and is the owner of the M/V Cosco Busan. Defendant denies
25 all other allegations contained therein.

26 7. Answering paragraph 13, Defendant admits Hanjin Shipping
27 Co., Ltd. on November 7, 2007 was the Time Charterer of the M/V Cosco Busan.

1 Defendant denies all other allegations contained therein.

2 8. Answering paragraph 14, Defendant admits Synergy
3 Maritime, Ltd. is the Commercial Manager of the M/V Cosco Busan. Defendant denies
4 all other allegations contained therein.

5 9. Answering paragraph 15, Defendant admits that this is an
6 admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of
7 Civil Procedure and is within the Court's admiralty and maritime jurisdiction under 28
8 U.S.C. § 1333 and Article III § 2 of the United States Constitution. Defendant denies
9 Plaintiffs' claim that this Court has jurisdiction over this action because this is a class
10 action lawsuit in which over \$5,000,000 is at issue and there are more than one hundred
11 putative class members and that this Court has jurisdiction under the Extension of
12 Admiralty Act. Defendant has insufficient information to respond to all other
13 allegations in the paragraph and therefore based upon their lack of information and
14 belief, Defendant denies the allegations contained therein in their entirety.

15 10. Answering paragraph 16, Defendant admits venue in this
16 Court is proper pursuant to 28 U.S.C. § 1391. Defendant denies all other allegations
17 contained therein.

18 11. Answering paragraph 25, Defendant denies that a class exists
19 or that class treatment is appropriate. Defendant has insufficient information to
20 respond to all other allegations in the paragraph and therefore based upon their lack of
21 information and belief, Defendant denies the allegations contained therein in their
22 entirety.

23 12. Answering paragraph 39, Defendant admits Regal Stone was the
24 Owner and Hanjin Shipping Co., Ltd. was the Time Charterer of the M/V Cosco Busan.
25 Defendant denies all other allegations contained in this paragraph.

26 **AFFIRMATIVE DEFENSES**

27 1. AS A FIRST SEPARATE AND DISTINCT AFFIRMATIVE

1 DEFENSE, Defendant alleges that Plaintiffs' claims, in whole or in part, are not ripe.

2 2. AS A SECOND SEPARATE AND DISTINCT AFFIRMATIVE
3 DEFENSE, Defendant alleges that at this time, no case or controversy exists.

4 3. AS A THIRD SEPARATE AND DISTINCT AFFIRMATIVE
5 DEFENSE, Defendant alleges that Plaintiffs' claims are limited in amount by 33 USC §
6 2704(a) and 42 USC § 9607(c).

7 4. AS A FOURTH SEPARATE AND DISTINCT AFFIRMATIVE
8 DEFENSE, Defendant alleges that Plaintiffs have failed to make claims as required by
9 33 USC § 2713(a) and therefore the Court lacks subject matter jurisdiction.

10 5. AS A FIFTH SEPARATE AND DISTINCT AFFIRMATIVE
11 DEFENSE, Defendant is informed and believes and thereon alleges that, by exercise of
12 reasonable efforts, Plaintiffs could have mitigated the amount of damages allegedly
13 suffered, but Plaintiffs failed and/or refused and continues to fail and/or refuse, to
14 exercise efforts to mitigate their damages.

15 6. AS A SIXTH SEPARATE AND DISTINCT AFFIRMATIVE
16 DEFENSE, Defendant alleges that Defendant is entitled to limitation of the value of the
17 vessel and pending freight under 46 USC § 30505.

18 7. AS A SEVENTH SEPARATE AND DISTINCT
19 AFFIRMATIVE DEFENSE, Defendant alleges that the Complaint and each and every
20 cause of action therein fails to state a claim upon which relief may be granted.

21 8. AS AN EIGHTH SEPARATE AND DISTINCT AFFIRMATIVE
22 DEFENSE, Defendant alleges that the alleged damages for which Plaintiffs seek to hold
23 Defendant liable resulted in whole or in part from the negligent, deliberate, intentional,
24 reckless, and/or unlawful acts or omissions of third parties, and Defendant is in no way
25 responsible for or liable to Plaintiffs for any such acts or omissions on the part of third
26 parties.

27 9. AS A NINTH SEPARATE AND DISTINCT AFFIRMATIVE
28

1 DEFENSE, Defendant alleges that Plaintiffs lack standing to compel Defendants to
2 establish a Fund & Emergency Clean-Up Program as alleged in the first cause of action.

3 10. AS A TENTH SEPARATE AND DISTRINCT AFFIRMATIVE
4 DEFENSE, Defendant alleges that Plaintiffs' Complaint lacks sufficient specificity to
5 state a claim for punitive damages.

6 11. AS AN ELEVENTH SEPARATE AND DISTINCT
7 AFFIRMATIVE DEFENSE, Defendant alleges that certain putative class members may
8 have waived and/or released some or all of the claims asserted in the Complaint.

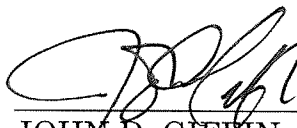
9 12. AS A TWELFTH SEPARATE AND DISTINCT
10 AFFIRMATIVE DEFENSE, Defendant alleges that Plaintiffs' claims for injunctive relief
11 are barred because Plaintiff has an adequate and complete remedy at law and/or
12 Plaintiff cannot make the requisite showing to obtain injunctive relief.

13 **PRAYER**

14 WHEREFORE, Defendant prays for judgment as follows:

- 15 1. That Plaintiff takes nothing by way of its Complaint;
16 2. That Plaintiff's Complaint be dismissed with all costs to be
17 taxed against Plaintiff, including reasonable attorney's fees as may be allowed by case or
18 statutory authority and/or agreement of the parties; and
19 3. For such other and further relief as the Court deems just and
20 proper.

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24 DATED: February 8, 2008



JOHN D. GIFFIN
JULIE L. TAYLOR
Attorneys for M/V COSCO BUSAN, *in rem*